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Attorneys for Defendant  
7-ELEVEN, INC.

**UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

KIMBERLY ALEKSICK,  
individually and on behalf of other  
members of the general public  
similarly situated,

Plaintiffs,

v.

7-ELEVEN, INC., a Texas  
Corporation, MICHAEL TUCKER;  
an individual; and DOES 1-50,  
Inclusive,

Defendants.

CASE NO. 08 CV 0059 J (WMc)  
The Hon. Napoleon A. Jones, Jr.

**NOTICE OF MOTION AND  
MOTION FOR JUDGMENT ON  
THE PLEADINGS BY DEFENDANT  
7-ELEVEN, INC. PURSUANT TO  
RULE 12(C) OF THE FEDERAL  
RULES OF CIVIL PROCEDURE  
AND MOTION TO STRIKE**

Hearing Date: March 3, 2008  
Time: 8:30 a.m.  
Courtroom: 12  
Judge: Hon Napoleon A. Jones,  
Jr.

1 TO PLAINTIFF KIMBERLY ALEKSICK AND HER ATTORNEYS OF  
2 RECORD:

3 PLEASE TAKE NOTICE THAT ON MARCH 3, 2008, AT 8:30 A.M., or  
4 as soon thereafter as the matter may be heard in the above-entitled Court located at  
5 940 Front Street, San Diego, California 92101, before the Honorable Napoleon A.  
6 Jones, Jr., Defendant 7-Eleven, Inc. ("7-Eleven") will and hereby does move the  
7 Court pursuant to Rule 12(c) of the Federal Rules of Civil Procedure for an Order  
8 dismissing Plaintiff's First Amended Complaint for failure to state a claim upon  
9 which relief may be granted. If the Court does not dismiss the entire First  
10 Amended Complaint, 7-Eleven further moves to strike Plaintiff's claim for  
11 punitive and exemplary damages pursuant to Rule 12(f) of the Federal Rules of  
12 Civil Procedure. The grounds for the instant motion, which are set forth in the  
13 accompany memorandum in support and incorporated as if set forth fully herein,  
14 include:

15 1. Plaintiff's First, Second and Third Causes of Action should be  
16 dismissed because the California Labor Code provides the exclusive remedy for  
17 Plaintiff's alleged injuries.

18 2. Plaintiff's First, Second and Third Causes of Action should be  
19 dismissed because 7-Eleven did not owe Plaintiff a duty of care.

20 3. Plaintiff's Fourth, Fifth and Sixth Causes of Action should be  
21 dismissed because 7-Eleven was not Plaintiff's employer.

22 4. If the Court dismisses Plaintiff's First, Second and Third Causes of  
23 Action, the Court should strike Plaintiff's claim for punitive and exemplary  
24 damages because the remaining claims do not support a claim for punitive  
25 damages under California law.

26 **DEFENDANT 7-ELEVEN, INC. REQUESTS ORAL ARGUMENT ON**  
27 **THIS MOTION.**

1 This Motion is based on this Notice of Motion and Motion, the attached  
2 memorandum of points and authorities and accompanying exhibits, the Declaration  
3 of Eric A. Welter, all papers and records on file in this case, all matters in which  
4 the Court may properly take judicial notice, and such other evidence and  
5 arguments that may be presented at or before the hearing on this motion.

6  
7 DATED: February 1, 2008

WELTER LAW FIRM, P.C.

8  
9 By:

10 /s/ Eric A. Welter

ERIC A. WELTER

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12 Attorneys for Defendant  
13 7-ELEVEN, INC.  
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